



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

Redact
c/o Redact
Redact

DECISION

MNP/165878

PRELIMINARY RECITALS

Pursuant to a petition filed May 4, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability [“DCHAA”] in regard to Medical Assistance [“MA”], a Hearing was held via telephone on June 2, 2015.

The issue for determination is whether it was correct for DCHAA to deny MA coverage for the drug Cytra-K/Polycitra-K oral solution for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact (not present at June 2, 2015
Hearing)
c/o Redact
Redact

Represented by:

Redact, petitioner’s
parents & guardians
Redact

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

BY: Redact, Medicaid System Specialist
Division of Health Care Access and Accountability
1 West Wilson Street
P.O. Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (28 years old) is a resident of Monroe County, Wisconsin.
2. Petitioner has received the drug Cytra-K/Polycitra-K oral solution paid for by MA for many years.
3. In November 2014 MA was informed by the manufacturer of Cytra-K/Polycitra-K oral solution that it was considered to be a Drug Efficacy Study Implementation ["DESI"] drug.
4. DESI drugs, according to the Food and Drug Administration ["FDA"], lack substantial evidence of effectiveness and are considered to be Less-Than-Effective ["LTE"].

DISCUSSION

Drugs determined to be LTE by the FDA are excluded from coverage by MA. See, Wis. Admin. Code § DHS 107.11(4)intro. (February 2014); See also, *ForwardHealth* Topic #523 "NonCovered Drugs" (toward bottom of webpage) at:

<https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Print/tabid/154/Default.aspx?ia=1&p=1&sa=50&s=1&c=53&nt=Prescriber+Information+for+Drug+Prescriptions>

The drug Cytra-K/Polycitra-K oral solution has been determined by the FDA to be LTE. Therefore, it was correct for DCHAA to deny MA coverage. It appears that MA has been previously incorrectly providing coverage.

Petitioner argues that she must have this drug in liquid form. She argues that it is a life-sustaining medicine that she has received since 8 months of age, that her life will be put in jeopardy if she does not have it, and that there is no viable alternative. The medical records in the record of this matter do not state that the Cytra-K/Polycitra-K oral solution is life-sustaining for petitioner or do they state that her life will be put in jeopardy if she does not have it. However, the medical records do state that petitioner's G-tube "can only be used for liquid or crushed medications" and that petitioner's parents were "made aware and advised to remain on Poly citrate K." Nevertheless, the medical records indicate that sodium bicarbonate may be an alternative (although petitioner's parents have concerns about electrolytes disturbances and the need for frequent lab monitoring). The medical records also indicate that petitioner's parents are looking into drug company assistance programs for Cytra-K/Polycitra-K oral solution.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct for DCHAA to deny MA coverage for the drug Cytra-K/Polycitra-K oral solution for petitioner.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 24th day of June, 2015

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 24, 2015.

Division of Health Care Access and Accountability